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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,755	12/13/2001	Erik Lipson	LPN-10203/03	5227
7590	05/21/2004		EXAMINER	
Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. 280 N. Old Woodward Ave., Ste. 400 Birmingham, MI 48009			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/022,755	LIPSON, ERIK
	Examiner Stephen J. Castellano	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 February 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 12 is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

In view of the Corrected Brief filed on February 25, 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Robbins, III (Robbins).

Robbins discloses a combination drinking container and straw comprising: a container having a top wall enclosing a chamber, a bottom, the top wall having an open top (at the first end of the straw at 62 providing fluid communication through the straw) and a groove formed in the top wall, a straw disposed in the groove, a first end (at 62) of the straw is in fluid communication with the chamber and a second end extends upwardly (shown in Fig. 6 and 8). At least part of

the configuration of the straw (the straw diameter) is defined by the configuration of the groove (the straw diameter must be less than the width of the groove).

Re claims 3 and 8, a portion of the straw is spaced above the top wall and forms a loop at 64.

Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gu and Conn.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin.

Lin discloses a combination drinking container and straw comprising: a container having a wall enclosing a chamber, a bottom, an open top and a groove formed between the outer surface of the side wall an outturned portion of the lip at the upper edge and a downturned portion of the lip at the upper edge, a straw disposed in the groove, a first end (at 62) of the straw is in fluid communication with the chamber and a second end extends upwardly and within the groove (shown in Fig. 2 and 3). Liquid may be sipped through from the container while the straw is disposed in the groove. At least part of the configuration of the straw (the straw diameter) is defined by the configuration of the groove (the straw diameter must be less than the width of the groove).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreozzi.

Andreozzi discloses a combination drinking container and straw comprising a container,

a straw retaining member (clip 40) formed in a wall of the container and a straw (flexible straw 34 and tube 20), a first downwardly extending end of the straw is in fluid communication with a chamber of the container and a second upwardly extending end (from 38 to 36).

For claims 5, 10 and 11, the container is closed by a lid and the straw extends through an aperture in the lid to form a hinge.

For Claims 1, 6 and 11, the second end of the straw is defined as that portion extending from inner end (36) to outer end (38) as shown in Fig. 1, while the straw is disposed in the at least one retaining member as shown in Fig. 2, the part which is close or at the inner end (36) extends upward from the container, nothing prevents the straw from being sipped through in the Fig. 2 configuration.

Andreozzi discloses the invention except for the groove since it is not known whether the clip 40 is elongated enough to form a groove. It is well known to make clips with elongated grooves such as a standard binder clip. It would have been obvious to add elongation to a C-ring clip motivated by increased surface area contact to prevent the straw from inadvertently becoming detached and the increased structural support accorded a longer clip with respect to a C-ring clip.

Claim 12 is allowed.

Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc